

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800

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STAFF REPORT: APPEAL **SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: County of Santa Barbara
LOCAL DECISION: Approval with Conditions
APPEAL NO.: A-4-STB-05-130
APPLICANT: 1260 BB, LLC c/o Ty Warner Hotel & Resorts, LLC
APPELLANTS: Jacqueline Roston & James O. Kahan; Coral Casino Preservation Committee
PROJECT LOCATION: 1260 and 1281 Channel Drive, Montecito area, Santa Barbara County.

PROJECT DESCRIPTION: Development Plan Revision of the Four Seasons Biltmore Hotel and Coral Casino Beach and Cabana Club Historic Rehabilitation Plan to allow modifications resulting in a net increase of 4,954 sq. ft. (2,900 sq. ft. and 2,054 sq. ft. conversion to usable space) to the Coral Casino, a reduction of guestrooms at the Biltmore (from 232 to 229) and the addition of one parking space at the Biltmore. The proposed modifications do not increase the building footprint.

SUMMARY OF STAFF RECOMMENDATION: SUBSTANTIAL ISSUE DOES NOT EXIST

Staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal has been filed. The **motion** and **resolution** for no substantial issue are found on **pages 4**. The appellants contend that the approved project is not consistent with policies and provisions of the certified Local Coastal Program and applicable policies of the Coastal Act with regard to historic and architectural resources, coastal access, visual resources and community character, nonconforming structures, mitigation of impacts, variances, conflicts of interest, and Public Records Act requests. The standard of review to determine substantial issue is whether the development conforms to the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act (see Page 7 for criteria).

The proposed project will not increase the footprint of the building, nor will it increase the building height, although a clear glass guard rail on the new rooftop deck would extend 1.5 feet above the height of the existing building. Given the other beneficial rehabilitation efforts that will take place and the minor nature of the changes, the project will not significantly impact architectural integrity, or have an adverse impact on public views to and along the ocean. Additionally, the proposed ramp will not adversely impact public access to the beach, but rather will improve it. In addition, the new restaurant will not serve more people and will not be open to the general public; therefore, it will not have any significant impact on availability of public beach access parking.

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EXHIBITS

- Exhibit 1.** Final Local Action Notice (County Approval With Conditions)
 - Exhibit 2.** Jacqueline Roston and James O. Kahan Appeal
 - Exhibit 3.** Coral Casino Preservation Committee Appeal
 - Exhibit 4.** Vicinity Map
 - Exhibit 5.** Location Map
 - Exhibit 6.** Floor Plans
 - Exhibit 7.** Building Elevations
 - Exhibit 8.** Proposed Public Beach Access Ramp
 - Exhibit 9.** Correspondence
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SUBSTANTIVE FILE DOCUMENTS: County of Santa Barbara Local Coastal Program; Final Environmental Impact Report (Case No. 04-EIR-00000-00006) & Appendices for the Four Seasons Biltmore Hotel & Coral Casino Historic Rehabilitation Plan, Development Plan Revision (County of Santa Barbara, April 2005);

I. APPEAL PROCEDURES

A. APPEAL JURISDICTION

Under Section 30603 of the Coastal Act, development approved by a local government may be appealed to the Commission if it is located within the appealable areas, such as those located between the sea and the first public road paralleling the sea, within 300 feet of the inland extent of any beach or of the mean high-tide line of the sea where there is no beach, whichever is greater, on state tidelands, or along or within 100 feet of any wetland, estuary, or stream. Further, any development approved by a local County government that is not designated as the principal permitted use within a zoning district may also be appealed to the Commission, irrespective of its geographic location within the coastal zone. Finally, development that constitutes major public works or major energy facilities may also be appealed to the Commission. (Coastal Act Section 30603[a][5]).

The Coral Casino Beach Club is located in the Montecito Community Plan area within unincorporated Santa Barbara County. The Post Local Coastal Program (LCP) Certification Permit and Appeal Jurisdiction map certified for the County of Santa Barbara indicates that the appeal jurisdiction for this area extends 300 feet from the beach. As such, the subject site is located within the appeal jurisdiction of the Commission and any project approved for the site is therefore appealable to the Commission.

B. APPEAL PROCEDURES

The Coastal Act provides that after certification of Local Coastal Programs, a local government's actions on Coastal Development Permits in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of its coastal permit actions. During a period of 10 working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Grounds for Appeal

The grounds for appeal of development approved by the local government and subject to appeal to the Commission shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in Division 20 of the Public Resources Code (Section 30603[a][4] of the Coastal Act).

2. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that a substantial issue exists with respect to the grounds of the appeal, substantial issue is deemed to exist unless three or more Commissioners wish to hear arguments and vote on substantial issue. If the Commission decides to hear arguments and vote on the

substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue stage of the appeal process are the applicant, persons who opposed the application before the local government (or its representatives), and the local government. Testimony from other persons must be submitted in writing. It takes a majority of Commissioners present to find that substantial issue is raised by the appeal.

3. De Novo Review Hearing

If a substantial issue is found to exist, the Commission will consider the County's action de novo. The de novo permit may be considered by the Commission at the same time as the substantial issue hearing or at a later time. The applicable test for the Commission to consider in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and the public access and public recreation policies of the Coastal Act. If a de novo hearing is held, testimony may be taken from all interested persons.

C. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On July 5, 2005, the County of Santa Barbara Board of Supervisors approved Development Plan No. 03DVP-00000-00002 to revise the Four Seasons Biltmore Hotel and Coral Casino Beach and Cabana Club Historic Rehabilitation Plan within the community of Montecito. The Notice of Final Action for the project was received by Commission staff on July 12, 2005. A ten working day appeal period was set and notice provided beginning July 13, 2005, and extending to July 26, 2005.

An appeal of the County's action was filed by Jacqueline Roston & James Kahan and the Coral Casino Preservation Committee, during the appeal period, on July 25, 2005. Commission staff notified the County, the applicant, and all interested parties that were listed on the appeals.

II. STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-STB-05-130 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission hereby finds that Appeal No. A-4-STB-05-130 raises **no substantial issue** with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency with the Certified LCP and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

On July 5, 2005, the Santa Barbara County Board of Supervisors undertook final discretionary action to approve a development plan revision that will result in a net increase of 4,954 sq. ft. (2,900 sq. ft. and 2,054 sq. ft. conversion to usable space) to the Coral Casino, a reduction of guestrooms at the Biltmore (from 232 to 229) and the addition of one parking space at the Biltmore. The proposed modifications will not increase the building footprint. Nor will they increase the building height, although a clear glass guard rail on the new rooftop deck would extend 1.5 feet above the height of the existing building.

The Coral Casino Historic Rehabilitation Plan (HRP) approved through the Development Plan Revision includes interior improvements, exterior alterations to the club's paving and pool deck area, removal of the La Perla Circle and La Perla restaurant interior spaces, and relocation of these functions to a proposed second story restaurant. An existing second story fitness room on the west side of the pool would also be removed and this function would be relocated to interior areas of the club. The existing sundeck on the second floor would be relocated to the roof of the proposed restaurant, and be surrounded by a 42" non-reflective glass guard rail. The project also proposes to add a net total of 2,900 sq. ft. and convert an additional 2,054 sq. ft. of existing but currently unused area to newly usable spaces, such that the square footage of the building would increase by 4,954 net new square feet. Interior floor plan changes include additions and remodels to the men's and women's locker rooms, addition of storage area for members behind the western cabanas, creation of a meeting room and improved administrative spaces, expansion of the first floor kitchen, addition of a second floor kitchen and addition of accessible restrooms throughout the facility. Floor plans are shown in Exhibit 6.¹

The HRP also includes related landscaping changes, tree replacements, and paving treatment changes, the enclosure of a small alley on the east side of the building, construction of an accessible ramp to the west of the club that would provide beach

¹ The County's approval of the Development Plan Revision appears to authorize the existing development itself (including development constructed prior to the Coastal Act and development that was approved in prior CDPs) as well as modifications to the existing development. However, since authorization is only required under the Coastal Act and LCP for new development, this report only discusses the proposed modifications to the existing development.

access to the public as well as Biltmore Hotel guests and Coral Casino members. Other landscaping, pool deck and paving changes are also proposed in and around the Coral Casino.

Operationally, the revised Development Plan continues to limit use of the Coral Casino to club members and guests of the Biltmore Hotel. It also includes conditions that maintain the same number of seasonal members and specifies use of the proposed restaurant for club members, hotel guests, and guests of hotel guests only. The revised development plan also recognizes reciprocal club usage, allowing up to 120 members from reciprocal clubs to access the facilities. To offset the only newly proposed uses, the revised development plan also reduces the number of rooms, or keys, at the Biltmore by a total of three guest rooms, and calls for the addition of one parking space in the area of the Hotel.

B. LOCAL PERMIT HISTORY

On May 5, 2005 the Montecito Planning Commission approved the Four Seasons Biltmore Hotel and Coral Casino Historic Rehabilitation Plan Development Plan Revision (Case No. 03DVP-00000-00002), with conditions. On May 16, 2005 the County Historic Landmark Advisory Commission (HLAC) approved the Coral Casino Rehabilitation Plan, adopting separate findings and applying separate conditions on its approval of alterations to the Coral Casino.

The Board of Supervisors received three appeals of the Montecito Planning Commission (MPC) action and three appeals of the Historic Landmarks Advisory Commission action. The appeals were submitted by the same three applicants: Coral Casino Preservation Committee, Coral Casino Members Committee, and James O. Kahan and Jacqueline Roston. Subsequently, the Coral Casino Members Committee withdrew their appeal of the MPC and HLAC actions.

The appeals by the Coral Casino Preservation Committee and James O. Kahan & Jacqueline Roston were heard at the Board of Supervisor's July 5, 2005 hearing. The Conditions of Approval and Findings for Approval of the Four Seasons Biltmore Hotel and Coral Casino Historic Rehabilitation Plan considered at the July 5, 2005 Board of Supervisors hearing represented the combined language of both the MPC and HLAC approvals. The appeals were denied by the Board of Supervisors and the final (combined) conditions and findings were adopted (Exhibit 1).

C. APPELLANTS' CONTENTIONS

The appeal filed by Jacqueline Roston and James Kahan is attached as Exhibit 2. The appeal asserts seven grounds for the appeal: (1) inconsistency with the Montecito Community Plan requirements for protection of the Coral Casino's architectural significance; (2) inconsistency with the LUP and Montecito Community Plan requirements for visual resources protection; (3) inconsistency with the Zoning Ordinance for nonconforming buildings and structures; (4) inconsistency with State Law prohibiting variances of this nature; (5) inconsistency with conflict of interest laws; (6) non-compliance with Public Records Act requests; and (7) inconsistency with the public access policies of the Coastal Act by increasing intensity of use of the restaurant

thereby impacting coastal access parking and by building an access ramp that will extend into the beach area.

The appeal filed by the Coral Casino Preservation Committee is attached as Exhibit 3. The appeal asserts five ground for the appeal: (1) inconsistency with the LUP and Montecito Community Plan requirements for protection of public access (traffic & parking); (2) inconsistency with the Montecito Community Plan requirements to preserve and protect properties and structures with historic significance, specifically including the Coral Casino; (3) inconsistency with the LUP and Montecito Community Plan with regard to protection of views; (4) inconsistency with the LUP and Montecito Community Plan requirements for commercial development to respect the scale and character of the surrounding residential neighborhoods; and (5) inconsistency with CEQA and the LCP by failing to comply with the requirement to mitigate project impacts to the maximum extent feasible.

D. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the project's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. The appellants contend that the project, as approved by the County does not conform to the policies of the LCP and applicable policies of the Coastal Act with regard to historic and architectural resources, coastal access, visual resources and community character, nonconforming structures, mitigation of impacts, variances, conflicts of interest, and Public Records Act requests.

Based on the findings presented below, the Commission finds that a substantial issue does not exist with respect to the grounds on which the appeal has been filed. The approved project is consistent with the policies of the County of Santa Barbara LCP and the public access policies of the Coastal Act for the specific reasons discussed below.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs., title 14, section 13115(b)).

In evaluating the issue of whether the appeals raise a substantial issue, the Commission considers the following factors:

- (1) The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
- (2) The extent and scope of the development as approved or denied by the local government;
- (3) The significance of coastal resources affected by the decision;
- (4) The precedential value of the local government's decision for future interpretation of its LCP; and

- (5) Whether the appeal raises only local issues, or those of regional or statewide significance.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the County does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

1. Historic Resources

The Coral Casino has been designated as an official Historic Landmark by the County of Santa Barbara. The Coral Casino was designed by prominent San Francisco architect Gardner Dailey and was constructed in 1937. The structure is located on the beach behind a seawall. There is no dispute that this building is a significant historical resource in Montecito and Santa Barbara County.

The appellants cited the following policies from the Montecito Community Plan (MCP; a certified part of the LCP) and the County's certified Land Use Plan regarding protection of historic and architectural resources of significance.

Goal CR-M-1: Preserve and Protect Properties and Structures with Historic Importance in the Montecito Community to the Maximum Extent Feasible. (MCP, pg. 120)

Policy CR-M-1.2: Improvements to the Coral Casino recreation club shall be designed in a manner to protect and enhance the historic use and architectural integrity of the property. Any renovations or new development on this property shall be constructed at heights that do not exceed the height of existing structures. (MCP, pg. 120)

The Roston & Kahan appeal asserts that the "primary problem with the proposed project is the second story restaurant which destroys the architectural integrity of Gardner Dailey's Low, Linear, and Open design." Further the appeal contends that the second story restaurant expansion is unwarranted because the restaurant expansion can be accommodated with a design on the first floor, thereby maintaining the low, linear, and open design. The appellants assert that the proposed second story element alters the proportion, size, bulk, and scale of the original design to the extent that the Coral Casino will not maintain architectural integrity, and therefore will be inconsistent with Policy CR-M-1.2 of the Montecito Community Plan.

The Roston & Kahan appeal further contends that the proposed second story restaurant does not meet Goal CR-M-1.1 of the Montecito Community Plan because it does not preserve the historic integrity of the building to the maximum extent feasible, but rather "destroys the architectural integrity of the Coral Casino." Additionally, the appellants argue that the proposed project is inconsistent with the height restrictions in MCP Policy CR-M-1.2 which provides that renovations and new development shall not be constructed at heights which exceed the heights of existing structures.

The Coral Casino Preservation Committee (CCPC) appeal asserts that the project is inconsistent with Goal CR-M-1 of the Montecito Community Plan because the landmark can feasibly be preserved and protected. The appeal asserts that the Levikow/Coral

Casino Preservation Committee Alternative in the EIR is the environmentally superior alternative that would avoid Class I impacts to the historic resources of the building. and The Levikow/CCPC Alternative calls for removal of certain non-historic building elements where the restaurant and members' dining room are located today, and relocation of these functions to the interior portion of the first floor. In both alternative designs, the kitchen would be enlarged to a lesser extent, and additional restrooms provided in fewer numbers and in alternate locations.

The CCPC appeal further contends that the proposed project does not protect or enhance the landmark's architectural integrity, as required in the Montecito Community Plan because, though the project proposes to remove some additions that were not part of the original building, it is only in exchange for additions that are not part of the original building.

The County provided the following analysis with regard to protection of architectural integrity in its June 23, 2005 staff report:

Staff Response: *Montecito Community Plan Goal CR-M-1 states: "Preserve And Protect Properties and Structures With Historic Importance In The Montecito Community To The Maximum Extent Feasible." Policy CR-M-1.2 grew out of this Goal. The project EIR (Attachment B) only identifies a Class I impact on the building as a historic resource, but does not identify a Class I impact on the building's aesthetics generally. The Montecito Planning Commission adopted Finding 1.5.1 that acknowledges potentially significant aesthetic impacts, but identifies mitigation measures that would reduce these effects to a less than significant level. The Montecito Board of Architectural Review also had generally favorable comments on September 13, 2004 regarding the project design (see Attachment D of the MPC staff report for April 20, provided in Attachment J of this Board Letter). Suggestions made by the MBAR were also incorporated by the applicant into the project.*

The project complies with Policy CR-M-1.2 because it will accomplish repairs, maintenance, and facility upgrades necessary to "protect and enhance" the historic use and architectural integrity of the property. Goal CR-M-1 and Policy CR-M-1.2 do not require that the project conform to the Secretary of the Interior's Standards. Thus, the Class I impact identified based on a failure of the project to conform to the Secretary's Standards, does not require a finding that the project will not protect and enhance the architectural integrity of the Coral Casino and does not require denial of the project.

Additionally, the County provided the following analysis with regard to the height of existing structures in its June 23, 2005 staff report:

Staff Response: *The proposed restaurant would be located where an existing unenclosed, but partially covered, sundeck exists today. A series of cabanas along the western side of the second floor would be removed and replaced with the restaurant, which would extend southward toward the ocean, over the existing banquet room*

Planning and Development has determined that the existing building height is 22'8 1/2", based on the height of the parapet coping around the Coral Casino tower. This parapet is above the proposed roof sundeck (shown at a height of 20'9" on the project

plans), making the addition restaurant well within the building height. While the height of the railings surrounding the roof sundeck would be 24'3" high, the Montecito Planning Commission considered this railing to be an architectural projection and not a structure. Therefore, the project is consistent with MCP policy CR-M-1.2.

With regard to preservation of architectural integrity, the County's analysis concluded that the modifications would not be consistent with the Secretary of Interior's Standards for Rehabilitation for historic structures and therefore the EIR identified a Class I impact to the building. However, the County's approval was predicated on a number of historical resources benefits allowing for several of the Coral Casino's features to be restored to their original configuration.

The appeals are focused on the placement of a restaurant on the second story of the structure and the roof top deck that would be above the restaurant. These modifications are not part of the original design of the building. However, given the other beneficial rehabilitation efforts that will take place and the minor nature of the changes, the Commission finds that the project does not raise substantial issue with respect to preservation of historic structures.

Additionally, though the height of the non-reflective glass railing would be approximately 1.5 ft. above the height of the structure as determined by the local government, the insignificance of a visually permeable railing that only extends 1.5 feet above the structure does not rise to the level of a "substantial" issue with regard to architectural integrity or impairment of visual qualities. Further, the extent and scope of the modifications to the Coral Casino approved through the Development Plan Revision are primarily local architectural issues and do not adversely impact coastal resources.

2. Coastal Access

The appellants cited the following excerpts and policies from the Montecito Community Plan (a certified part of the LCP), the County's certified Land Use Plan, and applicable policies of the Coastal Act regarding protection of coastal access.

MCP: ... commercial development should be limited to the amount needed to serve the greater Montecito community and additional tourist facilities should not be developed. (pg. 21)

MCP: At such time as the County is able to provide an equivalent amount of public parking elsewhere in the vicinity, parking on one side of Channel Drive shall be eliminated in order to accommodate bicycle lanes. (pg. 86)

LUP: The location and amount of new development should maintain and enhance public access to the coast... (pg. 13)

LUP Sec. 3.7.3: The Coastal Act requires that coastal areas suited for water-oriented recreational activities are protected for such uses... (pg. 83)

LUP Sec. 3.7.4: Local policies and recommendations are intended to provide the framework or implementation of the Coastal Act goal of providing maximum opportunities for access and recreation. (pg. 83)

LUP Policy 7-10: The County shall provide increased opportunities for beach access and recreation in the Montecito Planning Area... (pg. 89)

Additionally, the Roston & Kahan appeal, though not specific, references the public access policies of the Coastal Act:

Section 30210: In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211: Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212(a): Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources.

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated access shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.

Section 30212.5: Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

There are a total of 454 on-site parking spaces currently serving the Biltmore Hotel and Coral Casino, as required by the County's 1998 Development Plan. The EIR reports that there are 35 on-street public parking spaces provided along Hill Road, directly adjacent to the Biltmore Hotel and 23 public parking spaces on Channel Drive, directly in front of the Coral Casino. An additional 70 on-street parallel spaces are provided along the Section of Channel Drive from the Coral Casino to the Breakers Building (33 spaces on the north side and 37 spaces on the south side, for a total of 128 on-street spaces in the immediate project vicinity). Additional public parking is provided on-street along Channel Drive to the north and west of the Coral Casino and Biltmore Hotel. Parking in these areas is limited and heavily used for public coastal access, and presumably use by guests of the Coral Casino and Biltmore Hotel. The beach, Butterfly Beach, adjacent to the Coral Casino is a popular year-round beach for a variety of public recreational uses.

Regional access to the Coral Casino is from Highway 101, which is located north of the site. The site is access via Olive Mill Road to Channel Drive. Parking exists along the west side of Olive Mill Road between Hill Road and Channel Drive. Parking also exists between red curb zones on the transitions section of Olive Mill Road, continuing into Channel Drive, for the length of the Biltmore Hotel frontage. A parking aisle is also provided along Channel Drive, across from the Biltmore Hotel, as well as a series of

perpendicular parking stalls immediately adjacent to the Coral Casino. A sidewalk exists along the west side of Olive Mill Road, continuing to the north side of Channel Drive, from Coast Village Road and all along the Biltmore Hotel frontage. Sidewalks are also provided on the south side of Channel Drive, west of the Coral Casino, and continue the length of the Biltmore Hotel frontage. The site is accessible via the public bus system and though a formal bicycle path is not striped on Channel Drive to connect the Class II bicycle lane on Olive Mill Road to the Class I bicycle lane on Fairway Road, the scenic route along Channel Drive can receive significant use by bicyclists.

The Roston & Kahan appeal asserts that the expanded use of the restaurant facilities will contribute additional demand for parking that will further restrict parking for the popular beaches in the immediate area, thereby impairing access to the beach and other coastal resources inconsistent with the public access policies of the Coastal Act. Additionally, the appeal asserts that the proposed public access ramp does not conform with the public access policies of the Coastal Act because the ramp will not be built entirely behind the existing seawall and will extend into the existing beach area. They assert that the ramp would therefore inhibit access to coastal resources by removing the underlying beach area. The appellants suggest that if the ramp were built several feet behind the existing railing, coastal access might not be impaired.

The Coral Casino Preservation Committee (CCPC) appeal argues that the additional traffic and parking demand caused by this new restaurant will prevent a bicycle lane from being built along Channel Drive because the elimination of parking on one side of Channel Drive would become impossible after implementation of the proposed project. Further, the appellant argues that traffic and parking are already a problem in this neighborhood, resulting in congestion, public safety risks and public beach access impacts.

The proposed new restaurant area will be larger than the existing restaurant and would operate 7 days per week serving 3 meals per day, rather than the existing 2-3 nights per week for dinner and 3 days for lunch. Additionally, the restaurant would be available to hotel guests, rather than limited to Coral Casino members. Both appeals argue that this use will not maintain and enhance public access to the neighboring beach because coastal visitors will compete with restaurant patrons for the limited parking spaces.

Additionally, the CCPC appeal asserts that the commercial nature of the restaurant is inconsistent with the provisions of the Montecito Community Plan because it serves as a tourist facility.

The proposed restaurant facility will receive intensified use as a result of the complete weekly dining schedule. However, as provided in Condition 62 of the County's approval, indoor restaurant seating shall not exceed 97 seats at any given time, and up to 113 seats for peak events. The outdoor dining area shall not exceed 62 seats associated with the restaurant service. Currently, there are a total of 113 indoor dining seats and 112 outdoor dining seats. Therefore there will be a net reduction in the total seating area.

There are two reasons why the restaurant use is not anticipated to contribute adverse impacts to the parking situation. First, the site is to be used primarily by club members

or Biltmore Hotel guests and parking is already provided for them at the Hotel. Because the Coral Casino is operated in conjunction with the Biltmore Hotel, parking for the Coral Casino is located on the Biltmore parcels. Coral Casino member parking is primarily provided in the northeast parking lot. Second, Condition 19 of the County's approval requires that complimentary valet parking be provided at the Coral Casino on Saturdays, Sundays, and holidays from 10 a.m. to 5 p.m., or when the members' dining room is open for business or whenever there are events of over 50 in attendance. All valet parking is required to use Biltmore parking lots and passenger loading zones shall be limited to drop-off and pick up. Use of the restaurant by guests of hotel patrons could potentially contribute to on-street parking; however this is not anticipated to substantially increase use of coastal access parking. Therefore, the Commission finds there is no substantial issue with regard to coastal access parking and because the parking situation is virtually the same, there would be no substantial change as to the future potential bicycle path along Channel Drive.

The proposed access ramp will be available to the public and will meet ADA accessibility requirements. This will enhance the existing public access to the coast in this location, even if it occupies a small area of the sandy beach. Additionally, the Commission finds that due to the significant limitations on use of the Coral Casino facilities and the restaurant and the fact that it replaces an existing restaurant that serves hotel guests, the facility is not a new tourist-oriented commercial facility and maintains the character of the existing uses.

3. Visual Resources & Community Character

The appellants cited the following policies from the Montecito Community Plan (a certified part of the LCP) and the County's certified Land Use Plan regarding protection of visual resources and community character.

MCP Goal VIS-M-1: Protect the Visual Importance of the Santa Ynez Mountain Range and Ocean Views as Having Both Local and Regional Significance and Protect from Development Which Could Adversely Affect This Quality.

MCP Policy VIS-M-1.3: Development of property should minimize impacts to open space views as seen from public roads and viewpoints.

MCP: .. commercial development should be limited to the amount needed to serve the greater Montecito community and additional tourist facilities should not be developed... (pg. 21)

MCP Land Use-Commercial Goal: Strive to Ensure that all Commercial Development and Uses Respect the Scale and Character of Surrounding Residential Neighborhoods (pg. 51)

Section 3.4.2 of the LUP: The scenic resources of Santa Barbara's coastal zone are of incalculable value to the economic and social well-being of Santa Barbara County. The beauty of the Santa Barbara coastline is world-renowned; it is the basis of the County's strong tourist and retirement economies and is a source of continuing pleasure for the local populace.

LUP Policy 1-2: Where policies within the land use plan overlap, the policy which is the most protective of coastal resources shall take precedence (pg. 11)

LUP Policy 4-4: In areas designated as urban on the land use plan maps and in designated rural neighborhoods, new structures shall be in conformance with the scale and character of the existing community. (pg. 36)

LUP Policy 4-5: In addition to that required for safety, further bluff setbacks may be required for oceanfront structures to minimize or avoid impacts on public views from the beach. Blufftop structures shall be set back from the edge sufficiently far to insure that the structure does not infringe upon views from the beach except in areas where existing structures on both sides of the proposed structure already impact views from the beach. In such cases, the new structure shall be located no closer to the bluff's edge than adjacent structures.

LUP Policy 7-28: Visitor-serving commercial recreational development that involves construction of major facilities, i.e., motels, hotels, restaurants, should be located within urban areas, and should not change the character or impact residential areas. (pg 98)

Coastal Act Section 30251 (incorporated into the certified LCP): The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

The Coral Casino is located on the beach behind a seawall, with a public beach located upcoast, delineated by Channel Drive and a seawall. Downcoast uses include the Bonneymede Shores and Montecito Shores condominiums. Ocean Meadows, a planned unit development, is contiguous to and immediately east of Montecito Shores.

The Roston & Kahan appeal argues that “although some might not consider the seawall to be a bluff, it has the same practical effect as a bluff, i.e. it blocks views. There are no structures to the west of the Coral Casino and between the seawall and Channel Drive. Therefore, the in-fill exception should not apply to allow higher structures such as the second story restaurant. In other words, new construction should not be allowed to further degrade views.” The appellants also assert that the project would create a second story closer to the ocean, thereby blocking the public’s view of the landmark lighthouse tower and the Santa Ynez Mountains from certain locations along the beach and in the surf.

The CCPC appeal asserts that the project contributes to adverse visual impacts by exceeding the height requirement for the Coral Casino provided in the Montecito Community Plan. The appeal contends that the County defined an arbitrary point on the building as “the height of existing structures;” however, the MCP restriction on renovations and new development was specifically defined in terms of “heights.” The appeal suggests that if the County had used a different method, in consideration of the irregular shape and multiple facades of the *original* structure (not including additions that were permitted subsequent to 1937), the restaurant would not be consistent with the height requirement. Additionally, the appellant asserts that the project will have

adverse impacts on the public's view of this historic landmark and that the commercial restaurant facility is not in character with the residential neighborhood.

The CCPC appeal also contends that the community character and character of the property shall be impacted due to the mass, bulk, and scale of the modifications and the expanded use by the hotel. The second floor deck with private cabanas will be replaced by a more heavily used second floor restaurant. The appellants argue that there will be increased commercialization of the property because there are no restrictions on hotel usage of the second floor and the Hotel could choose to have events in the ballroom and second floor restaurant simultaneously with normal private member and hotel use.

The County provided the following analysis with regard to the height of existing structures in its June 23, 2005 staff report:

Staff Response: *The proposed restaurant would be located where an existing unenclosed, but partially covered, sundeck exists today. A series of cabanas along the western side of the second floor would be removed and replaced with the restaurant, which would extend southward toward the ocean, over the existing banquet room*

Planning and Development *has determined that the existing building height is 22'8 1/2", based on the height of the parapet coping around the Coral Casino tower. This parapet is above the proposed roof sundeck (shown at a height of 20'9" on the project plans), making the addition restaurant well within the building height. While the height of the railings surrounding the roof sundeck would be 24'3" high, the Montecito Planning Commission considered this railing to be an architectural projection and not a structure. Therefore, the project is consistent with MCP policy CR-M-1.2.*

As stated previously, though the height of the non-reflective glass railing would be approximately 1.5 ft. above the height of the structure as determined by the local government, the insignificance of a visually permeable railing does not rise to the level of a "substantial" issue with regard to views to and along the coast.

Given that the existing legal development includes second story structures, the second story restaurant expansion, though visible from the public beach, would not substantially modify the public views to and along the ocean. The certified LCP does not provide provisions to protect views of the building itself for the public. Additionally, Condition 28 restricts free-standing umbrellas on the roof deck. The modifications to the existing structure do not extend the footprint of the development and do not change the type of use, except to allow use by Biltmore guests rather than limiting use to private members only. For the reasons listed above, the proposed changes do not substantially impact the community character or surrounding residential neighborhoods.

4. Other Grounds for Appeal

The appellants cited the following policies from the County's certified Zoning Ordinance regarding nonconforming structures.

Article II, Sec. 35-58: NONCONFORMING STRUCTURE: *A building or structure, the setbacks, height, or location of which was lawful prior to the adoption of this Article or any amendments hereto, or previously adopted County Zoning Ordinances and which does not conform to the present regulations of the zoning district in which it is situated.*

Article II, Div. 10, Sec. 35-60 (Purpose and Intent) *states, in part: It is further the intent of this Article, subject to only very limited exceptions as specified to prevent nonconforming uses and structures from being enlarged, expanded or extended, or being used as grounds for adding other structures or uses prohibited elsewhere in the same district.*

Article II, Sec. 35-162 (Nonconforming Buildings and Structures) *states, in part: If a building or structure is conforming as to use but nonconforming as to setbacks, height, lot coverage, or other requirements concerning the building or structure, such structure may remain so long as it is otherwise lawful, subject to the following regulations.*

1. Structural Change, Extension, or Expansion. *A nonconforming building or structure may be enlarged, extended, moved, or structurally alternated provided that any such extension, enlargement, etc. complies with the setback, height, lot coverage, and other requirements of this Article.*

The Roston & Kahan appeal argues that the proposed development will enlarge the nonconforming structure, including portions of the building within setback areas, inconsistent with the requirements of the certified Zoning Ordinance for nonconforming structures. Additionally, the appellants assert that portions of the structure would have to be reconstructed, for example foundation modifications to support the second story expansion for the restaurant, in order to allow the additions. This reconstruction would extend the life of the nonconforming portions of the building which would be inconsistent with the Article II nonconforming structure provisions.

The County provided the following analysis with regard to the project's setback modifications in its June 23, 2005 staff report:

Staff Response: *The project design requires two modifications, which can be approved as part of a Development Plan, per Section 35-174.8 of Article II. The first modification is for the enlargement of an existing equipment access well to the east of the front entrance, such that the well would extend approximately eight feet into the required front yard setback. The second modification is needed pursuant to Section 35-174.8 to allow an existing alley on the eastern side of the building to be enclosed as part of the interior improvements to the Coral Casino.*

Justification for these modifications is discussed in the P&D staff memorandum to the MPC, dated April 27, 2005, provided in Attachment K. The County granted a variance in 1937 to allow the Coral Casino to be located in the front yard setback, as part of the original project design. This variance therefore makes the structure legal by permanently changing the setback in that location, also confirmed through approval of the as built development plan, 98-DP-031.

The justifications for the front yard modification is based on the fact that the equipment access well would be a minor extension of an existing basement vent, would allow equipment access into the proposed new laundry area as needed but

likely less than once a year, and would be screened by landscaping along the building frontage. Justifications for the interior yard setback modification to allow the alley to be enclosed along the same line as the existing building, include the fact that infill of this space would not exacerbate the building's encroachment as the infill area would match the existing eastern walls of the building, and it would allow for other floor areas to accommodate storage functions for members' deck furniture, ocean kayaks, thereby reducing noise and aesthetic impacts of the unenclosed alley used as a storage area. Such justifications, or evidence, have been incorporated in the recommended Findings (Attachment C).

Staff Response: *The County's Article II, Section 35-174.8, specifically allows the Planning Commission (or other appropriate decision maker) to grant modifications at the time of Development Plan approval.*

Sec. 35-174.8 states, in pertinent part:

At the time the Preliminary or Final Development Plan is approved, or subsequent Amendments or Revisions are approved, the...Planning Commission or Board of Supervisors may modify the building height limit, distance between buildings, setback, yard, parking, building coverage, or screening requirements specified in the applicable zone district when the Director, Zoning Administrator, Planning Commission or Board of Supervisors finds the project justifies such modifications.

As a condition of approval of any Preliminary or Final Development Plan, the...Planning Commission or the Board of Supervisors may impose any appropriate and reasonable conditions or require any redesign of the project as they may deem necessary to protect persons or property in the neighborhood, to preserve the neighborhood character, natural resources or scenic quality of the area, to preserve or enhance the public peace, health, safety, and welfare, or to implement the purposes of this Article.

In the present case, modifications were justified because they were deemed necessary by the Planning Commission and granted under section 35-174.8. A variance was not sought nor was one granted.

The MPC approved modifications for the equipment access well along the front of the building, and the alley enclosure along the east side of the building. The modifications are supported by the recommended Findings, provided in Attachment C, which are supported by the evidence in the record and specifically articulated in Planning and Development's April 27, 2005 memorandum to the Montecito Planning Commission (see Attachment K). In the present case the findings and evidence support the grant of the modification pursuant to section 35-174.8.

As described in the above County excerpt, two minor modifications were approved within zoning setbacks: (1) the enlargement of an existing equipment access to the east of the front entrance, such that the well would extend approximately eight feet into the required front yard setback and (2) the enclosure of an existing alley on the eastern side of the building. The LCP allows for minor modifications such as these to be made pursuant to a Development Plan approval. Additionally, the LCP allows for nonconforming buildings to be enlarged, extended, moved, or structurally altered provided that any such modification complies with the setback, height, lot coverage and other requirements of this article. The second story restaurant, roof deck, and other modifications are consistent with this requirement. These modifications have no

significant impact on public views to and along the coast or the architectural integrity of the property.

The CCPC appeal states that both the CEQA and MCP require protection of the historic landmark to the maximum extent feasible, given that the EIR acknowledges that there will be a Class I impact to historic resources and there is an environmentally superior alternative that would mitigate this impact. The appeal further states that the Class I impact to historic resources and the inconsistencies with the MCP are caused by one element of the plan: the placement of a new restaurant on the second floor which requires removal of the historic fabric; and this in turn, requires the placement of a new private deck at a height in excess of the MCP limits for this building. Additionally, the appellant asserts that the proposed findings and statement of overriding considerations approving the plan are not supported by evidence as required by CEQA, the LCP, MCP, and the coastal zoning ordinance.

The County provided the following analysis with regard to the project alternatives and County findings in its June 23, 2005 staff report:

Staff Response: The project EIR, section 8.0, reviewed four alternatives, including two alternative design options. Both Alternative F and the Levikow/CCPC Alternative call for removal of certain non-historic building elements where the restaurant and members' dining room are located today, and relocation of these functions to the interior portion of the first floor. In both alternative designs, the kitchen would be enlarged to a lesser extent, and additional restrooms provided in fewer numbers and in alternate locations.

In addition to not meeting several project objectives, summarizing project components listed on page 222 and 225 of the FEIR, both alternatives would not meet one of the four primary project objectives: provision of "a second floor restaurant offering a first class dining experience and views of the Pacific Ocean" (page 61 of FEIR). The lack of meeting this primary project objective, not just a desired project element, was the basis for rejecting these alternatives, as noted in Findings 1.6.2 and 1.6.3 of both the MPC and HLAC Findings.

Additionally, the applicant's representatives have stated at both the Montecito Planning Commission and the Historic Landmarks Advisory Commission hearings that the applicant would simply not build these alternative projects, and may not therefore pursue a comprehensive rehabilitation of the building. Without such a thorough rehabilitation effort, it is reasonable to assume that some deferred maintenance could worsen. This statement (p. 21 of the April 20 staff report) was a statement of fact, and not cited as "evidence of infeasibility", as suggested by the appellant.

Through its certification of the proposed FEIR, and its adoption of Findings 1.6.2 and 1.6.3, the MPC acknowledged the infeasibility of these alternatives meeting the primary project objectives stated by the applicant.

Staff Response: CEQA's allowance for decision makers to adopt statements of overriding considerations provides a tool for recognizing significant impacts, and also recognizing project benefits that may outweigh such impacts. The applicant's statement that the "enhanced private view from the private restaurant – which is the source of the Class I Impact under CEQA- does not create any benefit that would outweigh the unmitigated impacts to historic resources..." is an opinion which

overlooks the other project benefits that outweigh the historic resource impacts resulting from addition of the restaurant.

As enumerated in the recommended Board Findings provided in Attachment C (and based on Findings 1.7.1 through 1.7.6 adopted by both the MPC and the HLAC), project benefits that outweigh the Class I impact include, among others:

- *Overall rehabilitation of the Coral Casino,*
- *Removal of certain non-historic additions (La Perla Circle, La Perla restaurant addition, second floor exercise room),*
- *Restoration of two cabanas on the east side of the pool,*
- *Structural upgrades to the Coral Casino tower,*
- *ADA upgrades throughout the building,*
- *Installation of a storm drain and filtration system to treat off-site and on-site surface runoff,*
- *Provision of a vehicle turnout area to smooth traffic flow,*
- *Provision of an accessible beach access ramp to serve the Coral Casino members and the public, and*
- *Improved fire access*

CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect, which the activity may have on the environment. As described in the above sections, the proposed project does not have any significant adverse impacts on coastal resources and therefore mitigation is not required. The project is also consistent with the requirements of the LCP that were adopted to insure that development does not have significant adverse impacts on coastal resources.

5. Other Contentions That Are Not A Basis of Appeal

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for the subject appeals is whether a substantial issue exists with respect to the grounds raised by the appellants.

Section 30603 provides:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division. (Section 30603(b)(1)).

Section 30625 provides:

The commission shall hear an appeal unless it determines the following: ... (2) With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. (Section 30625(b)(2)).

In this case, the Roston & Kahan appeal on the County's final action includes three issues which do not meet the grounds for an appeal of the local action to the Commission. The grounds for appeal are limited to an allegation that the action does not conform to the LCP or public access policies of the Coastal Act.

The applicants' contentions with regard to variances under State law, conflicts of interest, and Public Records Act requests are not a grounds of appeal under the Coastal Act, pursuant to Section 30603 of the Coastal Act. Therefore, these issues cannot form the basis for the Coastal Commission's review of the County's action in approving the Development Plan Revision for the Coral Casino Rehabilitation Plan.

E. CONCLUSION

For the reasons discussed above, no substantial issue is raised with respect to the consistency of the approved development with the policies of the County's certified LCP regarding historic and architectural resources, coastal access, visual resources and community character, nonconforming structures, mitigation of impacts, variances, conflicts of interest, and Public Records Act requests. Applying the factors identified on page 7, the Commission finds that the proposed project will not increase the footprint of the building or increase the building height, although a clear glass guard rail on the new rooftop deck would extend 1.5 feet above the height of the existing building; therefore, it will not significantly impact architectural integrity, or have an adverse impact on public views to and along the ocean. The proposed ramp will not adversely impact public access to the beach, but rather will improve it. In addition, the new restaurant will not serve more people and will not be open to the general public; therefore, it will not have any significant impact on availability of public beach access parking. Therefore, the Commission finds that the appeals filed by Roston & Kahan and the Coral Casino Preservation Committee, do not raise a substantial issue as to the County's application of the policies of the LCP in approving the proposed development.